(22)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MISC. APPEAL (C) NO. 303 of 2007

APPELLANTS

1) Smt Bharti Nishad, Age - 20 years, W/o Bhimendra Kumar Nishad, Occupation - House Wife, R/o Mahamayapara, Aarang, Tah - Aarang, District - Raipur (CG)

2) Vedprakash Nishad, Age - 1 month S/o Bhimendra Kumar Nishad

(On behalf of minor - Appellant no.2, His mother Smt Bharti Nishad, Appellant No.1, as a Next Friend)

Versus

RESPONDENTS

1) Shyamlal Sahu, S/o Siyaram Sahu, Age - 26 years, Occupation - Car driver, R/o Through - Director, Health department, Behind - "Mantralay" Raipur, Tah & District - Raipur (CG)

2) Director, Health Department, behind "Mantralay" Raipur, Tah & District - Raipur (CG)

3) Govt of Chhattisgarh, Through - Collector, District - Raipur (CG)

4) Dulari Nishad, Age - 44 yers W/o Sunderlal Nishad,

5) Sunderlal Nishad, S/o Ratnu Nishad, Age - 60 Years

6) Kumari Chitralekha, Minor Age - 12 Years, D/o Sunderlal Nishad

7) Durgesh Nishad, Minor, Age - 10 years, s/o Sunderlal nishad

8) Suresh Kumar Nishad, Minor, Age - 12 years, S/o Sunderlal Nishad

On behalf of minor respondents No. 6 to 8 their mother respondent No.4 Smt Dulari Bai as next friend.
Respondents No.4 to 8 resident of Village Gujra, Post Lakholi, P.S. Mandir Hasaod, Tahsil & District Raipur.

Present : Shri AS Iqbal, counsel for the appellant.
None for the respondents.

ORAL ORDER
(Passed on 13th March, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This is an appeal under Section 173 of the Motor Vehicle Act 1988 (henceforth "the Act") for enhancement of compensation, and modification of the award has been preferred against the award dated 17.10.2006, passed by Eighth Additional Motor Accident Claim Tribunal, (FTC), Raipur (CG) (henceforth "the Tribunal") in claim case No.61/2005, whereby a compensation award of Rs.3,47,000/- has been passed.

2) Brief facts of the case are that, on 31.03.2004, Bhimendra Nishad (since deceased) was going from Raipur to Lakholi on his Motorcycle, he met with an accident caused by a car bearing registration No.CG-02-1921 (for short "the offending vehicle") sustained injuries and succumbed to those. Consequently, a petition under Section 166 of the Act has been

filed by the appellants, who are wife and son of the deceased, against respondents No.1 to 3, who are driver and owner of the offending vehicle. Respondents No.4 to 8, who are parents, brother & sister of the deceased also filed a separate application under Section 166 of the Act. Respondents, who are driver and owner of the offending vehicle, contested the claim.

3) Learned Tribunal enquired both the petitions together and passed award in favour of the appellants as well as respondents No.4 to 8. Compensation awarded by the Tribunal is as below :

(a)	Loss of dependency	Rs.2,72,000/-
(b)	Funeral expenses	Rs.5,000/-
(c)	Loss of consortium	Rs.5,000/-
(d)	Love and affection	Rs.30,000/-
(e)	Loss of estate	Rs.35,000/-
	Total Award	**Rs.3,47,000/-**

4) Learned counsel for the appellants contended that the Tribunal did not pass just and reasonable award and also erred in allowing the compensation to parents, brothers and sister of the deceased.

5) We have gone through the award. In absence of evidence of the employer or any documents to substantiate the income of the deceased, claimants failed to prove income of the deceased, however, the Tribunal has allowed Rs.2,000/- per month as income of the deceased, after deducting 1/3 towards his own

expenses, at the relevant time age of the deceased was 24 years, therefore, applied multiplier of 17 and recorded loss of dependency Rs.2,72,000/-. The Tribunal also awarded amount for funeral expenses, consortium, love and affection. So far amount awarded by the Tribunal is concerned, it is just and proper.

6) From the evidence relied on by the Tribunal, it is evident that respondents No.4 to 8 who are parents, brothers and sister of the deceased, they were also living along with the deceased and dependent upon the deceased. Respondents No.4 to 8 being legal representatives of the deceased are eligible for grant of compensation. Section 166 of the Act authorized all legal representatives who are dependents on the deceased to claim and receive compensation.

7) In view of the above, the appeal is devoid of merit, therefore, it is liable to be dismissed and is accordingly dismissed. Consequently, M.(C.)P.No.419/2007 stands disposed of.

Sd/-
V.K. Shrivastava
Judge

Sd/-
Chief Justice